

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ERVIN LEE MCFERRIN	§	
VS.	§	CIVIL ACTION NO. 1:17-CV-141
MARK BARBER, <i>et al.</i> ,	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Plaintiff, Ervin Lee McFerrin, an inmate formerly confined at the Mark Stiles Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against defendants Mark Barber, Gideon Daniel, Melissa Ballard, Patrick Muldowney, and Gutierrez Ramos.

The Court referred this matter to the Honorable Zack Hawthorn United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends the civil rights action be dismissed for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b).

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the records, and pleadings. Although not formally filed as objections, plaintiff has filed numerous pieces of correspondence that this Court construes as objections (docket entry nos. 17, 19 & 20). This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

On June 6, 2017, the Magistrate Judge ordered plaintiff to replead his cause of action within twenty (20) days of entry of that order (docket entry no. 10). On June 14, 2017, plaintiff requested a copy of his complaint which was sent to him on June 16, 2017 (docket entry no. 11). Plaintiff then filed correspondence on June 21, 2017, requesting a copy of the docket sheet in this case which was also sent to him on June 21, 2017 (docket entry no. 13). On June 30, 2017, plaintiff filed additional correspondence indicating he received the order to replead but did not answer the questions asked

of him (docket entry no. 14). The Report and Recommendation was then entered on October 2, 2017, recommending this civil rights action be dismissed for want of prosecution (docket entry no. 15). Plaintiff received a copy of the Report and Recommendation on October 9, 2017 (docket entry no. 16). Plaintiff then filed additional correspondence on October 12, 2017, essentially requesting appointment of counsel (docket entry no. 17). The Magistrate Judge then entered an additional order on October 19, 2017, denying plaintiff's request for appointment of counsel and explaining plaintiff merely needed to amend the factual details of his complaint (docket entry no. 18). This order also gave plaintiff an additional twenty (20) days to amend his pleadings. *Id.* Plaintiff then filed a Notice with the Court on November 9, 2017, complaining he was denied the appointment of counsel but still did not amend his pleadings as ordered (docket entry no. 19). On November 13, 2017, plaintiff filed another Motion to Appoint Counsel (docket entry no. 20).

Despite having a year to do so, plaintiff has failed to amend the factual details of his complaint as ordered by the Magistrate Judge. As explained by the Magistrate Judge, this does not require this assistance of appointed counsel. Plaintiff's objections are without merit.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A Final Judgment will be entered in this case in accordance with the recommendations of the Magistrate Judge.

So **ORDERED** and **SIGNED** this **19** day of **June, 2018**.



Ron Clark, United States District Judge